

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**PARKERSBURG DIVISION**

WILLIAM CUNNINGHAM,

Plaintiff,

v.

CIVIL ACTION NO. 6:06-cv-00169

STATE OF WEST VIRGINIA and  
COL. DAVID LEMMON,

Defendants.


**ORDER**

This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court grant the motion by David Lemmon to Dismiss and deny the motion by William Cunningham for Summary Judgment. Also pending before the court is a motion by the plaintiff for leave to file a written declaration of evidence [Docket 34]. This motion is **DENIED**.

The plaintiff has filed objections to the Magistrate Judge's recommendations. I have reviewed them *de novo* and find that they have no merit. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **GRANTS** Mr. Lemmon's motion to dismiss [Docket 15], **DENIES** the plaintiff's motion for summary judgment [Docket 27],

**DISMISSES** this action from the docket, and **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 22, 2007

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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE